

Claimant was a lab technician for respondent, using a V 95 machine which grinds lenses. The job required she place a lens into a "chuck" on the machine and grind the lens to the proper specifications. When it was finished, claimant would press a pedal and some buttons and remove the lens from the machine.

Claimant first began experiencing symptoms in her left upper extremity and shoulder in December 1998. She advised her supervisor, Doug Campbell, of the problems and requested medical treatment. Claimant did not, at that time, advise Mr. Campbell or any other respondent representative that the complaints were work related. Mr. Campbell advised her, if she wanted to seek medical treatment, then "that's what you need to do." Claimant told Mr. Campbell she was going to see Joseph E. Mumford, M.D. Respondent provided no additional medical treatment at that time. Dr. Mumford examined claimant and injected her left shoulder. The epidural injections caused claimant to have headaches which she described as severe.

Dr. Mumford continued conservative treatment of claimant's left shoulder. Dr. Mumford ordered x-rays of claimant's cervical spine, which showed spondylosis at C4-5 and C5-6 and a loss of cervical lordosis. He then recommended claimant follow up with an MRI.

The MRI performed in February 1999 confirmed a herniated nucleus pulposus at C5-6, which Dr. Mumford correlated with her symptoms. Dr. Mumford then referred claimant to Michael L. Smith, M.D., of Kansas Orthopedics and Sports Medicine. Dr. Smith first examined claimant on April 6, 1999. At that time, he reviewed the November 1998 x-rays of the left shoulder, which did show degenerative changes in the left AC joint. He also commented on cervical spine films from August 1997. Those earlier spine films failed to demonstrate any fractures, dislocations or subluxations. Dr. Smith went on to state that he did not see any osteolytic lesions, and the neural foramen appeared patent on the oblique views.

He noted claimant had a herniated nucleus pulposus at C5-6 and C6-7 on the left side. Claimant, at that time, refused an additional epidural steroid injection, having had such severe headaches the first time. Dr. Smith recommended a Medrol Dosepak and two weeks of physical therapy.

Claimant testified, after that treatment, she improved substantially. She missed her next appointment with Dr. Smith scheduled for April 30, 1999, and did not again seek medical treatment until September 28, 1999.

On September 27, 1999, while working the V 95 machine, claimant again began experiencing problems. Apparently, claimant's supervisor had tightened the chuck on the machine so tight that claimant was having substantial difficulty inserting and removing the lenses. By the end of the day, claimant was again experiencing significant problems in her upper extremities. She returned to Dr. Smith the next day, on September 28, with right upper extremity complaints. She told Dr. Smith of the problems with the chuck. Dr. Smith also noted in his report of that date that claimant's pain included neck complaints. Dr. Smith's impression was that claimant was suffering from cervical right radiculopathy. He removed claimant from work as of that date and prescribed a soft cervical collar.

When claimant began experiencing problems at work, she advised her supervisor, Doug Campbell, of those problems. Mr. Campbell then examined the V 95 machine. Claimant testified that Mr. Campbell agreed that the chuck was too tight. Claimant also stated that the chuck was later found to be defective and was replaced.

When the problems originally began, claimant submitted her bills to her health insurance carrier. However, the claim forms provided to the health insurance company were never placed into evidence, so it is unknown what claimant may or may not have represented at that time. Claimant also applied for and is receiving short-term disability payments of 60 percent of her wages. Claimant applied for the short-term disability through respondent's office, but again the claim forms are not in evidence and it is unknown what claimant may or may not have represented at that time.

Respondent contends claimant has failed to prove that her ongoing symptoms are related to her employment. They also contend Dr. Smith's notes do not support claimant's allegations regarding causation.

In workers' compensation litigation, it is claimant's burden to prove by a preponderance of the credible evidence his or her entitlement to the benefits requested. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

The Appeals Board finds claimant has proven that she suffered accidental injury arising out of and in the course of her employment with respondent, with the date of accident being September 27, 1999, her last day worked. Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999). While it was unclear initially whether claimant's complaints were related to her work and whether she advised respondent of same, there is no question that claimant's complaints, which arose on September 27, 1999, were related to the improperly tightened chuck. Claimant's testimony that she told her supervisor, Doug Campbell, is uncontradicted. Uncontradicted evidence which is not improbable or unreasonable will not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

While respondent does argue that claimant's symptoms varied between the right and the left side, the Board notes that Dr. Smith's and Dr. Mumford's diagnoses appear to focus on claimant's cervical spine. With a herniated disc at C5-6 and C6-7, it is medically possible that claimant's symptoms may vary from side to side. The medical evidence, however, has consistently focused on claimant's cervical spine as the cause of her physical problems.

Respondent further argues that the medical opinion of Dr. Smith regarding causation is somewhat equivocal. Dr. Smith does state that it is difficult for him to know if claimant injured herself on the job, as he has only her word for this. However, claimant's testimony regarding the onset of symptoms, in particular those occurring on September 27, 1999, is

uncontradicted. The Appeals Board finds that claimant has suffered accidental injury arising out of and in the course of her employment with respondent, with an injury date of September 27, 1999. Therefore, the Order of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated March 17, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

c: Paul D. Post, Topeka, KS
Wade A. Dorothy, Lenexa, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director